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Trading away our climate - Elizabeth May

On April 7, the Council of Canadians Victoria Chapter hosted an event focussing on Politics, International Trade Deals and Climate. The panel for this topic was a wonderful tribute to pan-partisan cooperation: Liberal MP Keith Martin, NDP MP Denise Savoie, and me. (They had also invited Saanich-Gulf Islands MP, the Hon Gary Lunn, but he did not respond.) The Council of Canadians event allowed the audience to experience something I hope we will see far more often—cooperation in politics.

After my talk, I had a half dozen requests for its text. I confess that I rarely speak from a written text. I prefer to speak extemporaneously, so I use a few notes to myself in illegible scrawl, usually point form and on the back of envelopes or old boarding passes. Still, the requests to share the key themes have persisted, so please accept the use of my *Island Tides* column in providing that text to some Salt Spring Islanders keen to read it!

Every trade deal represents a limitation on national sovereignty. While Canadian nationalists quite rightly rush to defend Canadian identity, national sovereignty is not always to be celebrated. After the 1992 Rio Earth Summit, Norwegian Prime Minister Gro Harlem Brundtland was asked why the world leaders had failed to take stronger steps on climate and biodiversity. She answered 'national sovereignty'—the unwillingness of nations to have others critique, and correct, domestic policy in the interest of common global security.

At the same time that the Rio treaties stumbled to the finish line, the same governments were giving away national sovereignty with both hands in the Uruguay Round. The eleven year round of negotiations under the General Agreement on Tariffs and Trade (GATT) resulted in the creation of the World Trade Organization. Looking at both sets of treaties, it is clear that the trade deals have teeth; environmental treaties have a strong set of gums.

Trade Sanctions

Enforcement mechanisms matter. The most successful global environmental treaty has been the Montreal Protocol. In September 1987, I was part of the Canadian government team in Montreal to negotiate a deal to protect the ozone layer. The key to the success of the protocol was that it contained effective sanctions. Any country that signed and ratified and subsequently chose to use ozone-depleting substances in contravention of the legally-binding protocol faced trade sanctions from the other parties.

Ten years later, in December 1997, the Kyoto Protocol was negotiated. By design, it shared the architecture of the successful ozone treaty. It relied on 'common but differentiated responsibilities': that is to say, the wealthy industrialized countries were to reduce emissions first, developing countries could catch up later.

But, unlike the Montreal Protocol, the Kyoto Protocol did not include trade sanctions. In fact, Canada's then-Minister of Environment, the Hon Christine Stewart, said that if trade sanctions were included, Canada would not sign. Why this turn-around?

It was all due to the creation of the World Trade Organization. The WTO set up its own Committee on Trade and the Environment. Rather than ask the question that troubled many of us: 'Are there trade deals that damage the environment?' the committee probed the question, 'Are there environmental treaties that impede trade?' The WTO committee made no ruling on the matter, but identified the Basel Convention on Hazardous Waste, the Convention on the Trade in Endangered Species, and the Montreal Protocol as impediments.

Suddenly, it became 'off limits' to use the only effective international tool (short of military invasion) to hold contracting parties to their word. Kyoto ended up with a limp noodle for enforcement. Any country that failed in

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the first commitment period, 2008-2012, to meet its targets would have an additional .3 ton/per ton penalty added to whatever new commitments were made in the second period. No wonder Canada's government wants to kill Kyoto. The only penalty for the Harper government's decision to repudiate a legally binding commitment does not kick into gear until we negotiate a second round of Kyoto.

Trade lawyer Steven Shrybman pointed out years ago that we would have effective climate action if governments cared about the climate as much as they care about intellectual property (IP) rights. To protect IP, the WTO community negotiated the Trade Related Intellectual Property Rights Agreement (TRIPS for short). Under TRIPS, every nation in the GATT market has a positive obligation to re-write domestic patent laws to meet US tests. Cross-border scrutiny to seek out products that violate IP rights can involve search and seizure. Imagine if those tools were brought to bear to protect climate: all nations must pass laws limiting carbon, bring in a carbon tax, install renewable energy, or they will not be allowed to trade. Goods crossing borders will be subject to seizure if the embedded carbon exceeds global norms.

Or, as a placard in Copenhagen proclaimed, 'If climate was a bank, they would have saved it already.'

The good news, out of this lopsided development of global trade laws versus environmental protection, is that

the WTO has shown us how to develop tools that work. The United Nations Charter proclaims clearly that no international agreement is allowed to supersede the UN Charter. The WTO must be subservient to the larger international commitment to peace and security. From this aspect, we need to negotiate the next phase of climate action with meaningful enforcement.

The planet is already global. The process of so-called globalization has been all about taking what is held in common and transferring it to private interests. It has been about reducing the ability of democratically elected nations to determine their own course, while increasing the power of transnational corporations.

Tools of The Trade

Re-balancing trade and the environment ensures that trade is fair, does not jeopardize local security and resilience, and that economies thrive, sustaining healthy communities.

We do not lack for solutions. We only need the key to the tool box kept exclusively for the WTO.

Elizabeth May, Order of Canada, practiced environmental law and attended many WTO meetings, from its first meeting in Singapore, to attending Seattle as an advisor to the minister for trade. She is the leader of the Green Party of Canada. ☞